

Title V Compliance Certification Memo, September 18, 2008

Issue

During DNR's presentation at the September 16, 2008 AWMA meeting, several facilities asked questions about what they should include in their Title V Annual Compliance Certifications. Facilities were left with the impression that they were only expected to report deviations from the requirements in their current Title V permit, even if the facility had obtained new or modified construction permits that had not yet been incorporated into the Title V.

Background

The following Q&A is from a presentation given by Diane Brockshus of DNR at the November 2004 AWMA meeting. The question had been submitted ahead of time, and the answer was discussed amongst compliance staff prior to the meeting.

Question:

What should a facility certify compliance with, if they've received a new or modified permit that's not incorporated into the Title V permit yet?

[Full text of question: It would appear that a Title V facility that has received a construction permit or construction permit modification and said permit or modification has not been entered into the Title V permit can not maintain compliance with and legally certify compliance with the Title V permit and at the same time comply with the new construction permit. In a case such as this to what does the IDNR want the facility to certify on the semi annual and annual Title V compliance certification.]

Answer:

From Plant-Wide conditions in TV permit: "for those applicable requirements which become effective during the permit term, the facility shall comply with such requirements in a timely manner."

Rule of thumb: If underlying requirement changes (because of construction permit, MACT or NSPS rule changes, or other reason), the source should comply with the new requirements.

When listing each requirement and whether there have been deviations, it depends on when the new requirement came into effect. If the change happened in the past year, the facility may be certifying compliance with the old permit conditions for the first part of the year.

If the change is older and the Title V permit hasn't been updated yet, list the current requirements, but make a note that the condition is different than what's in the current Title V.

Because this question has come up again, the compliance section is formalizing the position that facilities need to certify compliance with the requirements they're currently subject to, regardless of whether those requirements have been incorporated into the Title V permit. The compliance section will be posting this on the Air Quality Bureau website, as the beginning of a FAQ document for the annual and semi-annual Title V reports.

Title V Annual Compliance Certification FAQ

Question 1:

What do I report if my facility is subject to requirements that haven't been incorporated into my Title V permit?

Answer:

Sources should base their Title V compliance reporting on the requirements that are currently applicable, whether those requirements have been incorporated into the Title V permit or not. Sources should indicate somewhere in their report or cover letter that the current requirements differ from those in the latest Title V permit.

Discussion:

One of the main purposes of the Title V permitting program is to combine all of a facility's applicable requirements in one place. The purpose of the Annual Compliance Certification is to summarize a facility's compliance status with all its applicable requirements over the calendar year. Where there is some disconnect is when the applicable requirements change, and the change hasn't yet been incorporated into the Title V permit. This can happen when new or modified construction permits are issued, when a new MACT standard becomes applicable, when a facility is operating under a variance, or for other reasons.

The Plant-Wide Conditions of each Title V permit contain some version of the following statement (emphasis added):

“Unless otherwise noted in Section III of this permit, Facility X is in compliance with all applicable requirements and shall continue to comply with all such requirements. **For those applicable requirements which become effective during the permit term, Facility X shall comply with such requirements in a timely manner.**”

This statement covers situations where there are new or different requirements than those specified in the current Title V permit. Since this permit condition directs facilities to comply with new requirements, a failure to comply with those new requirements would be a Title V permit deviation that must be included in the Annual Compliance Certification. The reverse is

also true. If a requirement that was in the original Title V is no longer applicable, due to a permit rescission, modification, or other reason, the facility would no longer be required to certify compliance with that requirement.

This position is also supported by the following excerpt from the Title V minor modification rules, found at 567 IAC 22.112 (emphasis added):

“The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in paragraphs 22.112(4) “a” to “c,” the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. **During this time, the source need not comply with the existing permit terms and conditions it seeks to modify.** However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.”

Here, the rules expressly allow facilities to stop complying with Title V conditions that are out of date. Therefore, DNR does not require sources to identify noncompliance with an out of date Title V condition as a deviation in the Title V Annual Compliance Certification or Semi-Annual Monitoring Report.

Additional Questions and Answers resulting from 9/22/08 letter from Stanley Consultants to Linn County Air Quality Division (DNR answers in blue)

Attachment 1. List of Title V SAM and ACC Reporting Questions

Primary Question

1) Question: A TVOP Plant-wide Section contains the text: “for those applicable requirements which become effective during the permit term, the facility shall comply with such requirements in a timely manner.” The TVOP cites 567 IAC 22.108(15) as the authority for the requirement. The statement is true; facilities do have a duty to comply with many different permits, regulations, etc. that become effective during the term of a TVOP. It does not, however, clearly include the requirement for “compliance certification” with any additional applicable requirements that are not in the TVOP. Please explain the authority afforded by 567 IAC 22.108(15).

With that statement in the Plant-Wide Section, each Title V permit requires compliance with new conditions that become effective during the permit term. General Condition G4 of each Title V permit requires facilities to report the “compliance status of all emissions

sources.” Taken together, those two conditions indicate that Title V compliance reporting is not limited to just those applicable requirements that are in the Emission Point-Specific Conditions of the most recent version of the Title V permit.

The regulatory authority for most of the requirements discussed in this document is the Title V permit itself, and the IAC rules cited in the permit. If you have questions about the authority for a specific requirement included in a Title V permit, please direct them to Chris Kjellmark at Chris.Kjellmark@dnr.iowa.gov or 515-281-7826.

Different “Gap” Scenario Questions

2) Scenario: A facility has not received its original TVOP (it is in regulatory agency review). The facility has submitted their TVOP Application (and is covered by the permit shield). The facility is currently adhering to all permit requirements found in their facility’s CP/ATI/PTOs.

Question a): What Title V reporting requirements is the facility subject to per the Part 70 Title V Program (567 IAC 22.100+)? Annual EIQ reporting? SAM reporting? ACC reporting? Please cite regulatory authority.

[Annual EIQ reporting only](#)

Question b): If this TV facility is not subject to SAM and ACC reporting, but a TV facility that has been issued a TVOP that also has new CP/ATI/PTOs is subject to including the CP/ATI/PTO requirements into their SAM and ACC reporting, what regulatory authority accounts for this difference in reporting requirements?

[The reporting requirements are different because the first facility doesn’t have a Title V permit and the second facility does. The SAM and ACC reports aren’t required for facilities that do not yet have a Title V permit.](#)

3) Scenario: A facility has received its original TVOP. The facility’s current operations match the requirements in their TVOP.

Question: What Title V reporting requirements is the facility subject to per the Part 70 Title V Program (567 IAC 22.100+)? Annual EIQ reporting? SAM reporting? ACC reporting? Please cite regulatory authority.

[Annual EIQ reporting, SAM reporting, and ACC reporting](#)

4) Scenario: A facility has received its original TVOP. The facility has also modified some existing EU/EP specific requirements (i.e., the requirements currently differ from the latest TVOP). The facility has received a CP/ATI/PTO, as applicable, to operate these existing EU/EPs and is adhering to the terms and conditions of the CP/ATI/PTO, as applicable. The facility has also submitted a TVOP update application to incorporate the modifications into the TVOP.

Question: What Title V reporting requirements is the facility subject to per the Part 70 Title V Program (567 IAC 22.100+)? Annual EIQ reporting? SAM reporting? ACC reporting? Please cite regulatory authority.

- Annual EIQ reporting
- SAM and ACC reporting that covers all requirements applicable to the facility during the reporting period.

5) Scenario: A facility has received its original TVOP. The facility has introduced a new EU/EP at its facility. The facility has received a CP/ATI/PTO, as applicable, to operate this new EU/EPs and is adhering to the terms and conditions of the CP/ATI/PTO, as applicable. The facility has also submitted a TVOP update application to incorporate this new EU/EP into the TVOP.

Question: What Title V reporting requirements is the facility subject to per the Part 70 Title V Program (567 IAC 22.100+)? Annual EIQ reporting? SAM reporting? ACC reporting? Please cite regulatory authority.

- Annual EIQ reporting
- SAM and ACC reporting that covers all requirements applicable to the facility during the reporting period.

General Questions

6) Question: If a new EU/EP is present at the facility for which a CP/ATI/PTO, as applicable, has been approved, but it is not under the umbrella of the TVOP yet, must the facility list these requirements on the ACC Part 3C form and thereby certify compliance with its terms and conditions? If yes, under what authority does this new EU/EP, which is not yet in the TVOP, trigger compliance certification?

Yes, the requirements must be listed in Part 3C of the ACC. The authority for this is the Title V permit itself, as explained in the answer to question #1.

Note: We recall Doug Campbell indicating at the AWMA meeting that if the EU/EP is “new” then it is not yet under the Title V Program.

DNR regrets any confusion caused by comments at the recent AWMA meeting, but we put out a clarification quickly, and we have been consistent on this issue in the past. Because Title V fees must be paid on new units as soon as they begin operating, and because the obligation to comply with any new requirements is included in the Title V Plant-Wide Conditions, in actuality, new units *are* “under the umbrella” of the Title V permit.

7) Question: When is a CP or TVOP requirement considered “enforceable” - at the time that it is an application or after it becomes approved (acted upon) by a regulatory Agency? Under what regulatory authority?

This can vary depending on whether it’s a new permit or a modification. For specific questions, facilities should contact the appropriate permitting section.

8) Question: Is a facility required to “certify compliance” with a CP/ATI/PTO? Under what regulatory authority?

Some construction permits specifically require certain types of compliance reports. If the requirement is not included in the construction permit, compliance certification would only be required for a facility operating under a Title V permit. If compliance reporting requirements are included in a construction permit, a facility with a Title V permit would need to comply with both construction permitting and Title V reporting requirements.

SAM/ACC Form Questions

9) Question: If an existing requirement in the TVOP is no longer valid (due to equipment not operating) and thereby the facility can not be “out of compliance” with the requirement, must this requirement be listed on the ACC Part 3C form?

Obsolete requirements don’t *have* to be listed on the Part 3C forms. If the Title V permit is out of date, the facility should describe somewhere in their report the differences between the existing Title V permit and the requirements currently applicable to the facility. Some facilities incorporate this information into the reporting forms, while others explain in a cover letter or attachment.

10) Question: If an existing requirement in the TVOP is no longer valid (due to the requirement being superseded, possibly multiple times) and thereby the facility can not be “out of compliance” with the historical requirements, must these requirements be listed on the ACC Part 3C form?

[See answer to question #9](#)

11) Question: Is a facility expected to list applicable requirements, on the ACC Part 3C form, including those for new sources not yet included in the TVOP? Under what regulatory authority?

[See answer to question #6](#)

12) Question: Is a company expected to “certify” past, interim, and present “compliance” at the time of completing the ACC report? What date (or timeframe) is the company “certifying compliance” when a RO signs an ACC report on 3/31/xx?

The RO signs the ACC report on Part 1C, and is just certifying that the information in the report is true. Some questions in the report refer to the facility’s *current* compliance status (as of signature date), while others refer to the *reporting period*. The reporting period is typically the previous calendar year, but may be a portion of a year for recently issued or renewed Title V permits.

13) Question: On the Part 2M form, the questions states “Did your facility have any monitoring deviations from the TVOP requirements...” What monitoring requirements does this

include – the current issued TVOP, the current issued TVOP plus current issued other permits, etc.? Under what regulatory authority?

[This includes all monitoring requirements the facility is currently subject to. The authority for this is the Title V permit itself, as explained in the answer to question #1.](#)

14) Question: On the Part 2C form, Question 1a) asks “Is your facility currently in compliance with all Part III conditions stated in your Permit (TVOP)”. This question points the facility directly to the current issued TVOP Part III. It becomes a black/white yes/no response.

Question a): Is this how this question should be viewed and answered by the facility?

Question b): If a broader view is expected, please explain.

[Because the Title V permit requires compliance with all currently applicable requirements, it seems logical to answer the Part 2C questions based on all currently applicable requirements.](#)

Further,

Question c): If a current issued TVOP Part III condition has been superseded and relaxed/removed per a valid more recent CP/ATI/PTO (for which a Title V Significant Permit Modification has been submitted), then must a facility state they are out of compliance or in compliance with the “old” requirement listed in the current issued TVOP?

[No](#)

Question d): If a facility is to indicate “out of compliance” with the above scenario, then what is expected on the Part 6C – when the facility has already met all their duties to comply (i.e., the facility is in compliance with a valid more recent applicable requirement and has submitted all required documentation; the facility is only awaiting approval and incorporation of the requirements into the TVOP by the Agency)?)? In this case, per se, there is Compliance Plan.

[N/A](#)

Alternatively,

Question e): Can the facility not list the “obsolete” requirement on the Part 3C?

[See answer to question #9](#)

Question f): Must the facility list the “current” requirement on the Part 3C? Under what regulatory authority?

[See answer to question #6](#)

15) Question: On the Part 2C form, Question 1b) asks “Did your facility experience any deviations from the Part III conditions stated in your Permit (TVOP)”. This question points the facility directly to the current issued TVOP Part III. It becomes a black/white yes/no response.

Question a): Is this how this question should be viewed and answered by the facility?

Question b): If a broader view is expected, please explain.

Further,

Question c): If a current issued TVOP Part III condition has been superseded and relaxed/removed per a valid more recent CP/ATI/PTO (for which a Title V Significant Permit Modification has been submitted), then must a facility state they have deviations or no deviations with the “old” requirement listed in the current issued TVOP?

Question d): If a facility is to indicate “deviations” with the above scenario, then what is expected on the Part 4C/5C – when the facility has already met all their duties to comply (i.e., the facility has taken proper corrective action and has submitted all required documentation; the facility is only awaiting approval and incorporation of the requirements into the TVOP by the Agency)? In this case, per se, there is no deviation.

[See answers to question #14](#)

Acronyms referenced:

ACC	Annual Compliance Certification
ATI	Authorization to Install
AWMA	Air & Waste Management Association
CP	Construction Permit
EIQ	Emissions Inventory Questionnaire
EP	Emission Point
EU	Emission Unit
IDNR	Iowa Department of Natural Resources
PTO	Permit to Operate
RO	Responsible Official
SAM	Semi-Annual Monitoring
TVOP	Title V Operating Permit